

Michigan District Judges Association



October 3, 2011

Corbin R. Davis, Esq.
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2010-13

Dear Mr. Davis,

The Michigan District Judges Association is opposed to the adoption of ADM File No. 2010-13. The Staff Comment in reference to ADM File NO. 2010-13 indicates that the purpose of the proposed amendment is to clarify MCR 6.001 (B), which governs criminal procedure in reference to misdemeanor charges. Since the current rule applies only to misdemeanor cases and has no application to the felony charges handled by the District Courts, in connection with preliminary exams, the suggested changes do not clarify the existing rule, but would in fact effectuate a change of the existing case law. The adoption of this rule would overrule the current case law found in *Bay County Prosecutor vs Bay County District Judge*, 109 Mich App 476, 311 N. W.2d 399(1981), which

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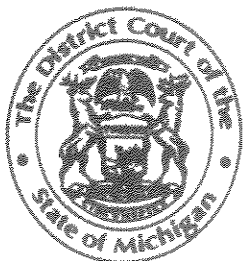
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establishes the defendant's right to discovery before the preliminary exam.

The proponents of this amendment seem to suggest that because MCR 6.201(F) mandates that the prosecuting attorney must comply with discovery requests within 21 days of a request and that because preliminary exams are scheduled within 14 days of arraignment, it is necessary to amend MCR 6.001(A) to prohibit discovery in felony cases until the cases are bound over to circuit court. (see attached letter of Timothy A Baughman) Perhaps rather than adding language to MCR 6.001 (a) that says the rules of discovery "shall not be operative before or during any preliminary exam" the applicability of MCR 6.201(F) to preliminary exams should be clarified. The adoption of this proposed amendment would be to render the preliminary exam useless for all the parties involved. The testimony of a witness that was not subject to proper cross-examination would deny prosecuting attorneys the opportunity to preserve the testimony of witnesses who may become unavailable or recant. The lack of discovery will force defense attorneys to hold exams they could have waived and to try cases they may have been able to plea bargain, but are unable to as a result of their inability to properly cross-examine prosecution witnesses due to the lack of discovery prior to preliminary exam.

We are all greatly aware of the fact that the recently published JRR not only identified the need to reduce the number of judges in and around this state, but also recommended a plan to effectuate the recommended reductions. It now seems ironic that a rule that will clearly increase the number of preliminary exams and felony trials that

would need to be conducted throughout the courts of this state is being proposed and considered. For all the reasons stated herein, the MDJA is opposed to the adoption of ADM File No. 2010-13.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terry L. Clark". The signature is fluid and cursive, with the first name "Terry" and last name "Clark" being clearly distinguishable.

Judge Terry L. Clark
President Michigan District Judges Association